

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE: . Case No. 22-90273  
Chapter 11  
COMPUTE NORTH HOLDINGS INC. .  
and CN MINING, LLC, . 515 Rusk Street  
Houston, TX 77002  
Debtors. .  
Tuesday, December 20, 2022  
1:59 p.m.  
.

TRANSCRIPT OF MOTION FOR ENTRY OF ORDER (I) IDENTIFYING ASSETS  
AND (II) CONFIRMING TERMS OF MODIFIED CONTRACT [410];  
EMERGENCY MOTION DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN  
ORDER (I) CONDITIONALLY APPROVING THE ADEQUACY OF THE  
DISCLOSURE STATEMENT, (II) APPROVING THE SOLICITATION AND  
NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE DEBTORS'  
JOINT CHAPTER 11 PLAN, (III) APPROVING THE FORMS OF BALLOTS AND  
NOTICES IN CONNECTION THEREWITH, (IV) SCHEDULING CERTAIN DATES  
WITH RESPECT THERETO, AND (V) GRANTING RELATED RELIEF [578];  
STIPULATION BY MARATHON DIGITAL HOLDINGS, INC. AND THE  
DEBTORS, GENERATE LENDING, LLC AND CERTAIN AFFILIATES AND  
MVP LOGISTICS, LLC [630];  
JOINT MOTION FOR EXPEDITED CONSIDERATION [643];  
EMERGENCY MOTION TO COMPEL REJECTION OF EXECUTORY  
CONTRACT [644];  
EMERGENCY MOTION FOR RELIEF FROM AUTOMATIC STAY [645]  
BEFORE THE HONORABLE MARVIN ISGUR  
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES CONTINUED.

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DRAKE HARVEY, President and CEO  
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RYAN MERSCH  
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1 (Proceedings commence at 1:59 p.m.)

2 THE COURT: All right. Good afternoon. We are here  
3 on the Compute North Holdings case. It is 22-90273.

4 Appearances should have been made electronically.

5 I'm going to start by taking an update by Mr. Grogan as to  
6 where he believes he wants to go today, and what other matters  
7 might be on the docket today. I am unable to be in court  
8 because of a COVID diagnosis, but I am active and participating  
9 with you from a remote location.

10 Mr. Grogan?

11 MR. GROGAN: Good afternoon, Your Honor. Sorry to  
12 hear you're not feeling well.

13 Your Honor, I think that we've made progress, but,  
14 you know, we've got the -- we've (indiscernible) cleanup  
15 (indiscernible) progress in the view of the Committee in  
16 particular. I'm going to take a shot at making some  
17 concessions here on the record that I think may get just a  
18 little (indiscernible) the Committee's concerns.

19 I know just -- we just thought there was some level  
20 of objection about an hour ago, so (indiscernible) doing this  
21 in real time, and I apologize, but if it's (indiscernible) --

22 THE COURT: Mr. Grogan, if I can get you to pick up  
23 your phone, please. I'm having trouble hearing you.

24 MR. GROGAN: Your Honor, is that better?

25 THE COURT: It is, and that's maybe because I'm

1 connecting in through sort of a three-way or something, but I  
2 can hear you now.

3 MR. GROGAN: Okay. So, Your Honor, you know, we got  
4 the Committee's supplemental objection about an hour ago. You  
5 know, I've been through it. I think there are some things that  
6 we, you know, certainly can do to address the vast majority of  
7 their concerns. If you want me to, I can just kind of do a --  
8 do a summary of what we would propose to revise in order to  
9 accommodate them.

10 THE COURT: I don't have any problem going that way.  
11 It makes some sense to me. I thought there were some obvious  
12 things to do as well. So why don't you go ahead and let's see  
13 where you are.

14 MR. GROGAN: Okay. So, Your Honor, the first thing  
15 the Committee took issue with was the filing date for the  
16 retained causes of action list. We had proposed January 18th  
17 for that, which was, I think, eight days prior to the voting  
18 deadline. You know, this is somewhat of a just pick a date. I  
19 would propose that we move it back to January 13th to give the  
20 parties even more time.

21 You know, there is some benefit to not making that as  
22 quick as possible, because, you know, we might be able to reach  
23 some incremental settlements between now and that date, which  
24 would actually benefit the estate, then I -- you know, there is  
25 -- there is some benefit to having a little bit of time before

1 that becomes final. But I would think that, you know, January  
2 13th is certainly a workable date.

3 Your Honor, the second thing that they took issue  
4 with was the fact that in our supplemental disclosures  
5 regarding relief causes of action, we gave customers notice  
6 that, you know, we were not going to pursue them for any  
7 collection actions if they -- if they elected not to opt out of  
8 the releases. In our view, that's just the fair thing to do.  
9 I don't see any reason to leave customers in the dark.

10 We are in a position where we're going to have to  
11 reject the customer contracts, and I think just as a matter of  
12 fairness for that constituency, we need to tell them, you know,  
13 we have a release structure, and if you don't opt out of it,  
14 you're going to be the beneficiary of a release.

15 The next item that they took issue with was the  
16 90-day payment list. You know, just to be clear, the list that  
17 we provided in the supplemental disclosures, which was filed as  
18 Exhibit C to the amended disclosure statement, is just a list  
19 of creditors that we are proposing would be beneficiaries of  
20 releases under the plan, so long as they don't opt out of the  
21 releases.

22 There are additional parties on the 90-day payment  
23 list that we filed as part of the statement of financial  
24 affairs, and I think, you know, just as a matter of additional  
25 disclosure, it would not be hard for me to add a statement

1 that, the point is it refers people to the full list on the  
2 statement of financial affairs, which is a matter of public --  
3 public record. And then they can -- you know, to the extent  
4 anybody is curious as to who was left off the list, they can  
5 see that in comparison to the list we filed as Exhibit C.

6 Your Honor, on the solicitation deadlines, I was -- I  
7 am trying to get this served out by Friday. I am a little bit  
8 constrained by Epiq. Obviously, they -- you know, we've got a  
9 holiday weekend coming up. Epiq told me that if I can get them  
10 final documents by 7 p.m. this evening, they can have it filed  
11 in -- filed out -- or served out by Friday.

12 I think, just to address the Committee's concern that  
13 we didn't have a firm deadline, what we would do there is add  
14 that the solicitations will be served no later than Tuesday,  
15 which still gives us more than 28 days' notice of the plan and  
16 disclosure statement. So those are the -- those are the  
17 changes and accommodations that we have to offer in order to  
18 address the Committee's residual concerns.

19 THE COURT: Thank you.

20 Let me hear from, perhaps, somebody. This says,  
21 "Press 5-star." Let me get them active. Give me just a  
22 second.

23 Mr. Gibbs, good morning -- or good afternoon.

24 MR. GIBBS: Good afternoon, Your Honor. Chuck Gibbs  
25 with the firm of McDermott Will & Emery (indiscernible) going,

1 which we represent the Committee. Maybe it's just for me --

2 THE COURT: Mr. Gibbs, you're -- I need -- I need you  
3 to pick up your phone as well, I think.

4 MR. GIBBS: I don't know if I can, but if I can't,  
5 I'll dial up (indiscernible).

6 THE COURT: Or just get closer to the speaker or  
7 something.

8 MR. GIBBS: Can you hear me? Is that getting --

9 THE COURT: We'll give it a shot.

10 MR. GIBBS: -- better at all?

11 THE COURT: That is better.

12 MR. GIBBS: If you don't (indiscernible) take a  
13 ten-second break, I'll call in on my cell.

14 THE COURT: Let's take the break. It's tough -- it's  
15 tough hearing you.

16 MR. GIBBS: Okay. Thank you, Judge.

17 I'm sorry.

18 THE COURT: No problem.

19 (Pause)

20 THE COURT: Mr. Gibbs, let's try that. Mr. Gibbs?

21 MR. GIBBS: Yes. Can you hear me now, Judge Isgur?

22 THE COURT: Oh, much better. Thank you.

23 MR. GIBBS: All right. Again, I apologize for the  
24 interruption. I was asking whether you thought it would be  
25 better for me to refrain from commenting until you've raised

1 whatever concerns you had, or do you want me just to respond to  
2 Mr. Grogan's comments, or deal with my overarching objections?  
3 I'll proceed any way you would like.

4 THE COURT: Well, why don't I defer to you.

5 MR. GIBBS: Okay. Well, thank you, Judge.

6 Let me, first, address the proposals that Mr. Grogan  
7 just offered the Court on the record, and that was to back up  
8 the deadline for the debtor to file its list of retained causes  
9 of action from the 18th to the 13th. While it does make that  
10 deadline 13 days before the current (indiscernible) deadline, I  
11 still have the same concern, which is that people may have cast  
12 ballots through the first weeks of (indiscernible) and  
13 materials on the reasonable assumption that they are, in fact,  
14 getting (indiscernible) pieces.

15 They are getting something in exchange for giving  
16 something only to find out that their name is on the retained  
17 causes of action list. So I'm -- you know, you can never  
18 eliminate the problem if we extend this out for just, for a  
19 vote, before that but the retained causes of action is  
20 published, but I'm concerned that moving it back from the 18th  
21 to the 13th doesn't allay my concern that people will be making  
22 decisions and voting on potentially incorrect information.

23 That's maybe my first response with the first issue  
24 they raised. You know, I think I'm fine with them referring to  
25 -- referring creditors to the full list of 90-day payments that

1 are found on the schedules. It may -- you know, it may cost a  
2 few dollars more, but it might be easier just to attach the  
3 schedules, because that is the comprehensive list of 90-day  
4 payments.

5 I know that the debtor did not include -- or I  
6 understand today that the debtor didn't include certain  
7 creditors on the Exhibit C for various reasons, so, I mean,  
8 there may be footnotes or other incremental information they  
9 would need to attach to the full list to apprise creditors of  
10 why certain ones are not -- is not -- the debtor doesn't intend  
11 to go after certain creditors.

12 The solicitation deadline, the big problem we had, as  
13 we pointed out in our objection, was that it was the 22nd or as  
14 soon thereafter as practicable, which we found to be wholly  
15 unsatisfactory because it could significantly compress the  
16 voting deadline or time the creditors had to vote if the  
17 solicitations materials went out later than the 22nd. If they  
18 are now proposing it will be no later than the 27th, I think  
19 that solves one problem and exacerbates another.

20 So it gives us clarity as to when the materials would  
21 go out, but it potentially further compresses the voting  
22 deadline. To the extent that we (indiscernible) the solution  
23 to the deadline to get materials out, it's going to be no later  
24 than the 27th, we ought to count the days from the 27th and  
25 make that the appropriate voting deadline rather than further

1 compressing what I think is already a too-compressed timeline  
2 for the creditors to make the decision whether to vote yes or  
3 no.

4                   So I think those are my responses to the suggestions,  
5 and I'm happy to give the Court the benefit of our thoughts  
6 with respect to what we thought we were going forward on today,  
7 or I can wait and have you deal with these sort of seriatim off  
8 of your other concerns.

9                   THE COURT: Is there anybody else that wants to  
10 address anything about the solicitation motion and Mr. Grogan's  
11 proposal on how to resolve things? If so, please press  
12 "five-star" one time.

13                   So, Mr. Grogan, can I -- I hate doing all this  
14 negotiation the way we're doing it, but I think it's just the  
15 best way given the time deadline. I'm going to propose some  
16 stuff that isn't an order and try and listen to what problems  
17 it creates.

18                   It seems to me that if somebody votes believing that  
19 they're going to get a release, and then they don't get a  
20 release, that we need to give them the ability to change that  
21 vote more meaningfully than normal. So if you get a vote in  
22 where someone voted before they got the list, can we adopt a  
23 procedure to make it easy for them to change their vote?

24                   Second, can we accept all of your other proposals,  
25 and then extend the voting deadline out by, roughly, five more

1 days? At that point, I think we'll have adequate opportunity  
2 for people to absorb the list. We will have solved the  
3 vote-change deadline by giving more people an opportunity to  
4 change, I think, resolves both what you and the Committee are  
5 trying to do.

6 And when I look at your schedule, I, frankly, don't  
7 see that five more days of voting out on the tail end is going  
8 to adversely affect where you need to go. I may misunderstand  
9 that. Other than that, it looked to me like your proposals  
10 work for me and, generally, for Mr. Gibbs.

11 MR. GROGAN: Thank you, Your Honor.

12 Certainly, we can add five days to the voting  
13 deadline on the back end. I think, currently -- and, Mr.  
14 Shelley, correct me if I'm wrong, but I think that we had  
15 proposed January 28th, right? Was it --- Mr. Shelley, I think  
16 you may be on mute.

17 THE COURT: Yeah. I'm going to get -- he's just now  
18 (indiscernible) his line. Let me get him.

19 I've got you active, Mr. Shelley. Good afternoon.

20 MR. SHELLEY: Good afternoon, Your Honor. Scott  
21 Shelley, Paul Hastings (indiscernible). (Indiscernible), the  
22 date we have proposed is (indiscernible) voting deadline and  
23 the objection deadline.

24 THE COURT: So, again, this may be my connection  
25 problem because I am literally on a boat. Mr. Shelley, can I

1 get you to pick your phone up, please?

2 MR. SHELLEY: Yes, Your Honor. I apologize for that.

3 The deadline in our procedures as proposed were  
4 January 26th.

5 MR. GROGAN: So then, I guess, we would move it to  
6 whatever you -- February 1st, or --

7 THE COURT: Wait. What day of the week --

8 MR. GROGAN: January 31st, I believe.

9 THE COURT: Yeah. If you went to February 1 --

10 MR. GROGAN: The 31st -- the 31st.

11 THE COURT: February -- let's call it February 1.

12 Does that work for a voting deadline?

13 MR. GROGAN: That works, Your Honor.

14 THE COURT: Mr. Gibbs, if we did those two things,  
15 i.e., made it easier for someone to change their vote if  
16 they're on the list, and extended the deadline out by five more  
17 days as well as moving up to January 13th the disclosure list,  
18 have we resolved your concerns?

19 MR. GIBBS: On those issues, yes, Your Honor. I  
20 think we have. And can you hear me? Because I keep getting a  
21 message saying my hand is lowered.

22 THE COURT: I can hear you. I can hear you.

23 MR. GIBBS: Now I (indiscernible) --

24 THE COURT: Okay. Well, then what other issues do  
25 you have that you want to raise, Mr. Gibbs?

1                   MR. GIBBS: It's really our -- with respect to the  
2 content in the plan of the releases being granted, and you had  
3 asked -- you had asked the debtor to come back with a  
4 description of the value of the claims being released and the  
5 reasons for the proposed release, and we don't think that what  
6 the debtor has done in the revised disclosure statement and  
7 revised plan adequately addressed the Court's concerns, and  
8 still are problematic for us.

9                   In the eight-page supplement that they've attached,  
10 you have the first few pages basically regurgitating the  
11 releases that are in the plan. You have one paragraph that  
12 describes the fact that the independent director has caused six  
13 interviews to be conducted of directors and officers and,  
14 apparently, concluding that they have concluded that there are  
15 no meritorious causes of action based on that because they're  
16 still proposing a plan that releases current and former Ds and  
17 Os with no consideration, at least being disclosed, having been  
18 given by those parties.

19                   Typically, independent directors hire independent  
20 counsel to do their investigation. We have no disclosure of  
21 what the investigation was, any report from the independent  
22 director as to the results of the six interviews they've done,  
23 or any memo from counsel. And I'll point out, I believe it's  
24 counsel to the debtors that is doing the interviews rather than  
25 counsel for the independent director, so we're concerned that

1 the plan should not be sent out for votes unless they more  
2 wholesomely describe the value of the claims that they believe  
3 exist.

4 They do go through six pages of explaining their  
5 interpretation of Delaware law and why there would be no breach  
6 of duty (indiscernible) unless there's a finding of gross  
7 negligence for fraud. If you assume that that's disclosure to  
8 the creditors of the value of the claims, I would probably take  
9 issue with that, but I think it misses the point. They need to  
10 be indicating what transactions they have reviewed, what the  
11 content of the interviews found and information they've  
12 gathered, and what led them to conclude that they should  
13 release these parties for no consideration and no value  
14 whatsoever.

15 So I think -- and I think they also ought to point  
16 out to the creditors that based on this structure, it's likely  
17 the estate is not going to be able to tap a \$10 million D&O  
18 policy, because if they are saying you can (indiscernible) go  
19 after Ds and Os for gross negligence and fraud, those would  
20 likely be exceptions to the D&O coverage obligations. So to  
21 take the question of whether or not to (indiscernible) -- to  
22 constructively fraudulent transfer against the insurer if they  
23 were paid probably millions of dollars for a policy that can  
24 never be touched.

25 They are also releasing their accountant as a party

1 that's named as a -- or there is absolutely no discussion of  
2 (indiscernible) investigation as to whether or not there is any  
3 potential liability with the accountant. So there is -- in our  
4 opinion, there is still insufficient disclosure to warrant us  
5 going out for votes when the premise of the plan is that these  
6 people get full and complete releases even though they're  
7 offering zero consideration.

8                   And to the extent the Court doesn't agree with us and  
9 thinks that the debtor is on notice of potential problems  
10 (indiscernible) to go forward with this disclosure statement  
11 and proves ultimately that it's sufficient, we would ask the --  
12 for the permission to our have solicitation letter attached  
13 directly behind the debtor's solicitation in the solicitation  
14 materials that go out.

15                   We don't think the estate should be burdened by a  
16 second mailout of just our letter, and we also don't think it's  
17 appropriate to bury it somewhere in 200 pages of documents.  
18 And I can argue further with the Court to present further  
19 argument to the Court on why it's appropriate, why its straight  
20 down the middle in plain English, and why it should not have to  
21 be amended to include unsupported allegations that the debtor  
22 made in its reply last Friday, but I'll pause there, Judge, and  
23 see if you have any questions of where we stand.

24                   THE COURT: Mr. Grogan, where do I see the benefit to  
25 the estate of giving the releases?

1                   MR. GROGAN: Your Honor, it's the -- the disclosure  
2 statement does make clear that these are -- these are mutual  
3 releases between the debtor and all of its stakeholders. This  
4 is a settlement plan, and we are -- we are not interested in  
5 proposing a plan that basically declares war on every -- every  
6 stakeholder. It's --

7                   THE COURT: No, I understand that, but where do I see  
8 in the plan what -- and let's talk about the directors, and  
9 let's talk about the accountant, both issues that Mr. Gibbs  
10 identified, what is the benefit to the debtor of giving  
11 releases to the directors and the accountant? Where do I see  
12 that in the disclosure statement?

13                   MR. GROGAN: Your Honor, we have enjoyed -- we have  
14 enjoyed good governance over this case from the beginning. The  
15 directors and officers have worked extraordinarily hard to  
16 generate a meaningful return for creditors, and the estate has  
17 directly benefitted from the work that they've been doing  
18 through -- to monetize the assets and provide the benefits  
19 under the plan, which is, you know, a cash distribution on  
20 prepetition claims.

21                   THE COURT: Well, no. That's the new 1125(e)  
22 provision that you included that Mr. Gibbs is not objecting to.  
23 I'm talking about the general release to them. Where do you  
24 ever identify the benefits of the estate of giving a general  
25 release as opposed to the 1125(e) protection? Or maybe he's

1       objecting to the 1125(e) protection. I haven't heard that if  
2       he is.

3                    MR. GROGAN: Your Honor, we're not give -- I think  
4       there is -- there is a fundamental misunderstanding. We are  
5       not giving a general release to the directors and officers.  
6       This is a limited release, and there are -- there are  
7       carveouts. For example, we are not releasing any director or  
8       officer from breach of duty of care. The -- you know, and we  
9       make that very clear in the supplemental disclosures that we  
10      are -- that we are putting out there.

11                  And I do not think it's accurate to say that we are  
12      somehow waiving any claims that could be asserted against the  
13      D&O policy, because there is literally -- there are literally  
14      no releases in this plan against anybody for a breach of duty  
15      of care.

16                  THE COURT: Mr. Gibbs, is he right about that?

17                  MR. GIBBS: What the plan does is releases the  
18      current and former directors and officers from any and all  
19      claims except those founded upon gross negligence and fraud.  
20      There is no also-exception for any claims based on a breach of  
21      fiduciary duty or duty of breach of a duty of care or loyalty.  
22      So I just disagree with --

23                  THE COURT: Well, this is -- this is --

24                  MR. GIBBS: -- Mr. Grogan's characterization --

25                  THE COURT: This is the -- no. This is easy. If he

1 intended to do that, let's do that, and doesn't that resolve  
2 your objection?

3 MR. GIBBS: Absolutely. If they're not releasing  
4 them from duties -- breaches of duty of care and loyalty,  
5 that's the basis for retained causes of action that we think  
6 are appropriate, and then we will bring, unless our examination  
7 believes that aren't any meritorious claims. We have not done  
8 that. We have tried to save the estate money, and what we've  
9 now -- what we've now learned is that there have been six  
10 interviews done by the debtor of current and former Ds and Os.

11 THE COURT: Hold on. Hold on.

12 Mr. Grogan, if I understood you right, all this  
13 requires is changing some language to assure that that release  
14 isn't there, right?

15 MR. GROGAN: Your Honor, what I said was they -- so  
16 it -- let me -- I want to be very clear about that. Under --  
17 these are -- these are Delaware corporations to get -- to  
18 assert a cause of action against somebody. Under Delaware law,  
19 you have to allege gross negligence. The directors and  
20 officers are not being released from gross negligence, willful  
21 misconduct, or actual fraud.

22 So if anybody wants to assert a claim for breach of  
23 duty of care, they have to allege gross negligence, and that is  
24 not a release cause of action.

25 THE COURT: Wait a minute. Are you going to preserve

1 any allegation of breaches of duty of care against the  
2 directors, and let whoever alleges it worry about whether it's  
3 gross negligence or simple negligence? You told me that you're  
4 not releasing any --

5 MR. GROGAN: But they --

6 THE COURT: -- breach of a duty of care.

7 MR. GROGAN: They are not -- they are not released.

8 THE COURT: So (indiscernible) --

9 MR. GROGAN: So you would have to allege -- you would  
10 have to allege gross negligence.

11 THE COURT: Well, there are two different statements  
12 here. One is the debtor --

13 MR. GROGAN: Yeah.

14 THE COURT: -- doesn't think these are worth anything  
15 because we'd have to prove gross negligence, and we don't think  
16 they can. But number two is we're not releasing anything from  
17 the duty of care if it turns out that we are wrong about that,  
18 and simple negligence is enough to bring a claim. Both of  
19 those statements can be true. Are they?

20 MR. GROGAN: Your Honor, I do not think simple  
21 negligence is enough to bring a claim.

22 THE COURT: I understand that (indiscernible) --

23 MR. GROGAN: So that's an inaccurate -- that's --

24 THE COURT: So why do we need to release it?

25 MR. GROGAN: I do not think -- I do not think we have

1 a release of breach of duty of care.

2 THE COURT: Well, then let's just add a simple  
3 statement to the list of things that aren't being released,  
4 that there is no release of allegations of a breach to duty of  
5 care, and I think we solve the problem.

6 MR. GROGAN: Okay.

7 THE COURT: Mr. Gibbs, am I right?

8 MR. GIBBS: I believe you are, Judge. If it's clear  
9 that they are not releasing the current and former Ds and Os of  
10 claims based upon breach of duty of care and loyalty, then I  
11 think that was our -- the primary thrust of our objection.

12 THE COURT: Okay.

13 MR. GROGAN: Well, we -- they are getting a release  
14 from breach of duty of loyalty to the extent that it is not  
15 gross negligence, fraud, or willful misconduct.

16 MR. GIBBS: That's our problem, Judge. It's  
17 completely circular.

18 THE COURT: Yeah.

19 MR. GIBBS: And --

20 THE COURT: Okay. Then tell me the benefit to the  
21 estate of giving that release.

22 MR. GROGAN: Your Honor, there are -- the releases  
23 are mutual. We are offering releases to the creditor  
24 constituency --

25 THE COURT: Right. You haven't identified one claim

1 that the former directors have against the estate. Why do you  
2 need to -- why -- what is the benefit to the estate? I got it  
3 that they're mutual. The Committee is objecting because you're  
4 giving a release with no benefit.

5 MR. GROGAN: Your Honor --

6 THE COURT: (Indiscernible) --

7 MR. GROGAN: Your Honor, they're not -- they're not  
8 worth pursuing. It's a waste of the estate's money to pursue  
9 causes of action which are -- which are not worth pursuing, and  
10 we have provided an analysis that shows that these -- the  
11 claims that Mr. Gibbs is trying to drum up will simply waste  
12 money.

13 THE COURT: Okay.

14 MR. GROGAN: And we're -- we are --

15 THE COURT: Well, I think --

16 MR. GROGAN: We are the fiduciaries. We are the  
17 fiduciaries of this estate.

18 THE COURT: I think you get to do this. I am going  
19 to overrule his objection, and I'll allow you to proceed on  
20 that basis. I won't rule on his motion to include the letter.

21 Mr. Grogan, I think I can't force you to include the  
22 letter under Century Glove (phonetic) or otherwise. I think he  
23 can send any letter he wants, and the estate has to pay for  
24 sending the letter. That will cost the estate a fortune. So  
25 do you want to attach his letter in the manner that he

1 suggested, or do you want him to send his own letter at your  
2 expense?

3 MR. GROGAN: Your Honor, I am willing to include a  
4 letter from the Committee. However, the one he drafted is --  
5 you know, it is inaccurate in two fundamental respects.

6 First, it suggests that we are giving global releases  
7 to the directors and officers. We are not. It needs to be  
8 clear that there are carveouts for any conduct which could be  
9 construed as gross negligence, willful misconduct, or fraud.  
10 So they should not be suggesting that the directors and  
11 officers are just being released from any imaginable claim.

12 Second, it is inaccurate in the sense that it tells  
13 creditors that they are -- that they are being asked to give  
14 releases, but it does not say anything about the fact that if  
15 they -- if they opt -- if they stay within the release  
16 structure and do not opt out of the releases, they actually get  
17 a release. That is a -- that is an important fact that needs  
18 to be added to his letter so that people know if they do not  
19 opt out, they get a release. It is a give a release, get a  
20 release.

21 THE COURT: For the same reason that I can't force  
22 you to send his letter, I can't force him to change his letter.  
23 He is communicating to his beneficiaries. He gets to  
24 communicate in the manner that he wants, and you get to pay for  
25 it. So you can either include his letter in the manner that he

1 is requesting, or I'm going to let him send his own letter and  
2 make you pay for it. That's what the law is.

3 MR. GROGAN: Your Honor, that's -- that's fine.  
4 That's fine. We will send his letter.

5 THE COURT: All right. And you will send it as --

6 MR. GIBBS: And, Your Honor, --

7 THE COURT: -- immediately behind your letter, right?  
8 Not hidden on the 200th page like he fears. In this stack of  
9 paperwork, your cover letter, and then his cover letter, right?

10 MR. GROGAN: I'm -- is that for me, Your Honor?

11 THE COURT: It is.

12 MR. GROGAN: Yes. We'll -- we'll put it -- so how do  
13 you want it structured? Do you want the -- you want the -- you  
14 want his letter on top of the disclosure statement?

15 THE COURT: No. It's going to -- you're going to  
16 have a cover letter, and I think his request was his -- I'll  
17 let --

18 This is all voluntary on your part, Mr. Gibbs. Tell  
19 him what you want in order to not (indiscernible) on your own.  
20 He can either (indiscernible) do it. I'm not going to make him  
21 do it. It's a save -- money-saving issue.

22 MR. GIBBS: That's correct. Our request,  
23 specifically, is that it go directly behind the solicitation  
24 letter drafted and sent by the debtor that will, we presume,  
25 will be on top of all the actual solicitation materials.

1                   MR. GROGAN: Okay. That's fine, Your Honor.

2                   THE COURT: Okay.

3                   MR. GROGAN: We'll get it sent out.

4                   THE COURT: And I am -- I do believe that the debtor  
5 can decide simply not to pursue something on the grounds that  
6 it thinks there aren't claims. That may or may not be a  
7 prudent decision. It may or may not want to get  
8 (indiscernible), and it may or may not be one that gets  
9 confirmation, but we're at a disclosure statement hearing. I'm  
10 overruling the objection that it is fundamentally flawed at  
11 this point.

12                  MR. GIBBS: Thank you, Judge.

13                  THE COURT: But we have not (indiscernible).

14                  Thank you.

15                  What do we have next?

16                  MR. GROGAN: Your Honor, I think next, we will go to  
17 a couple of agreed orders that we had worked out with Corpus  
18 Christi Energy Park regarding their motion to lift -- lift the  
19 stay and motion to compel assumption of rejection.

20                  Mr. Micheli is going to handle those.

21                  THE COURT: Thank you.

22                  Get his line active. Mr. Micheli, good afternoon.

23                  MR. MICHELI: Good afternoon, Your Honor. Are you  
24 able to hear me?

25                  THE COURT: Yes. You're coming through clearly.

1 MR. MICHELI: All right. Yes, Your Honor. As  
2 Mr. Grogan indicated, the next two matters on the agenda are  
3 emergency motions filed by Corpus Christi Energy Park. The  
4 first was a motion to compel rejection of the debtor's and  
5 Corpus Christi Energy Park's design to build a contract, and  
6 the second was a motion for relief from the automatic stay with  
7 respect to that contract.

8 Your Honor, the parties have agreed to the forms of  
9 order, the form of order with respect to the motion to compel  
10 appears at Docket Number 688, and the -- the agreed relief,  
11 Your Honor, is that that contract is going to be deemed  
12 terminated upon entry of that order. The debtors -- Corpus  
13 Christi Energy Park was seeking rejection. Obviously, the  
14 debtors had submitted a notice of termination of the contract,  
15 and so the parties have agreed to the termination of that  
16 agreement, and both sides preserve all of their rights with  
17 respect to that contract going forward.

18 And then, Your Honor, the second order is on the  
19 motion to -- for relief from stay, which the agreed order on  
20 that appears at Docket Number 689, and that is simply a  
21 withdrawal of that motion, Your Honor, without prejudice to  
22 Corpus Christi Energy Park's right to file that at a later date  
23 to the extent necessary.

24 THE COURT: Thank you.

25 And who do we have on the phone from 214-855-3102?

1                   MR. CASTILLO: Good afternoon, Your Honor. Mark  
2 Castillo of Carrington Coleman on behalf of Corpus Christi  
3 Energy Park LLC.

4                   THE COURT: Mr. Castillo, good afternoon.

5                   I didn't have any problem with the orders that you  
6 all had agreed to, Mr. Castillo. If you want to address, then  
7 you may, otherwise, I'll just see if anyone else objects, and  
8 if no one objects, I will sign your two orders.

9                   MR. MICHELI: Thank you, Judge. Just here if there  
10 were any questions. Thank you very much.

11                  THE COURT: Thank you.

12                  Does any party object to the entry of either 688 or  
13 689? Okay. There are no objections. I will sign those two  
14 orders. They will be entered this afternoon.

15                  Thank you.

16                  MR. MICHELI: Thank you, Your Honor.

17                  THE COURT: (Indiscernible).

18                  MR. MICHELI: Your Honor, we also -- the next -- yes.  
19 The next matter is with respect to a (indiscernible) and agreed  
20 order, and a joint motion filed by the debtors and Marathon  
21 Digital Holdings, Inc., for emergency approval of that  
22 stipulation and agreed order.

23                  Your Honor, that motion was filed at Docket Number  
24 643 and attached at 643-1 is the stipulation and agreed order.  
25 Your Honor, on December 15th, we filed a notice of -- excuse me

1 -- a notice of hearing with respect to the joint motion, and  
2 the affidavit would serve us with respect to the motion and the  
3 notice of hearing appear at Docket Numbers 657 and 677  
4 respectively.

5 In addition, Your Honor, yesterday we submitted and  
6 filed a notice of virtual hearing regarding the joint motion  
7 which appears at Docket Number 680, and the affidavit of  
8 service with respect to that matter appears at Docket Number  
9 694.

10 Your Honor, this is a -- this is a stipulation and  
11 agreed order that the parties have been working on for many  
12 weeks, and it is an agreed order between the debtors, Marathon  
13 Digital Holdings, Inc., MVP Logistics LLC, which is a party  
14 that the debtors have a contract to warehouse some services  
15 with, and Generate Lending, LLC, and GC Data Center Equity  
16 (phonetic) Holdings, LLC., who is the party that now owns the  
17 debtors former Kearney and Wolf Hollow sites.

18 In short, Your Honor, the stipulation and agreed  
19 order provides for the return of nearly 14,000 uninstalled  
20 miners that are owned by Marathon Digital. Marathon is one of  
21 the largest customers of the debtors, and, also, contract  
22 counterparty with the debtors among other things, and  
23 Marathon's miners, Your Honor, are uninstalled. So these are  
24 cryptocurrency miners that have never actually been put into  
25 one of the facilities to begin their mining.

1                   Those uninstalled miners are located in three  
2 locations, the MVP Warehouse located in Humble, Texas, and then  
3 the former facilities owned by the debtors that are now owned  
4 by Generate, the facility is in Kearney, Nebraska, and Wolf  
5 Hollow. Your Honor, in essence, what this deal does is it's an  
6 agreement among those parties to allow Marathon to retrieve its  
7 miners.

8                   First and foremost, the debtors are agreeing that  
9 those miners are not property of the debtor's estates. Those  
10 miners are owned by Marathon, and the debtors are also agreeing  
11 to release and terminate any liens or security interests that  
12 they may have with respect to Marathon's miners. Marathon and  
13 the debtors have also agreed, Your Honor, to reduce and allow a  
14 portion of Marathon's claim.

15                   Specifically, Your Honor, Marathon, it filed a proof  
16 of claim in the approximate amount of \$42 million, \$21 million  
17 of which related to a note between the debtors and Marathon.  
18 The debtors and -- the debtors do not seek the amount of that  
19 note, and I believe Marathon was in agreement with the amount  
20 of that note subject to certain fees and expenses that they may  
21 have claimed with respect to that note.

22                   The debtors have also asserted against Marathon  
23 certain charges with respect to past warehousing charges  
24 related to the MVP storage. Marathon disputed those amounts  
25 and those invoices, Your Honor, and in order to resolve those

1 disputed invoices, Marathon has agreed to reduce its proof of  
2 claim solely with respect to its note by \$1 million from  
3 approximately 21 million to \$20 million, and the parties then  
4 reserve all of their rights with respect to Marathon's  
5 remaining proofs of claim.

6 Further, Your Honor, the debtors have agreed, and  
7 we'll be filing notices of objection, with respect to the  
8 (indiscernible) contract, and Marathon reserves all of its  
9 rights with respect to setoff recruitment and other equitable  
10 remedies that it may have.

11 Your Honor, with respect to MVP, as indicated, MVP is  
12 the warehousing party that the debtors have a contract with to  
13 store various equipment, Marathon had filed proofs of claim on  
14 the debtors' cases in the amount of approximately \$155,000.  
15 During the discussions with Marathon and MVP and the debtors,  
16 MVP has asserted various liens with respect to the miners  
17 located in their warehousing facilities, and those are with  
18 respect to not just Marathon's miners but to -- to other miners  
19 that are located in those facilities.

20 As part of the settlements and in satisfaction of  
21 those asserted liens, the debtors have agreed and are seeking  
22 authority to pay those two invoices, or excuse me, those proofs  
23 of claim in the amount of \$155,416.20 in full satisfaction in  
24 any and all prepetition claims that MVP has, and the debtors  
25 believe that this is a benefit to not just Marathon but to the

1 debtors and their other customers as well.

2 This will allow, obviously, MVP to obtain its miners.

3 It will also allow the debtors to retrieve miners that they

4 have storage with MVP, and it also will allow for other

5 customers who are seeking return of their equipment to obtain

6 their miners as well. To be clear, Your Honor, the debtors are

7 not agreeing to any costs associated with the retrieval of

8 miners. The debtors are paying their invoice -- excuse me,

9 their warehousing charges current on a post-petition basis, and

10 the debtor -- but the debtors have not agreed, and Marathon

11 acknowledges that they are responsible for any and all, what

12 I'll call, retriever charges or pick the pack (phonetic) and

13 prepare charges.

14 Those are the charges that MVP will incur in order to  
15 prepare the Marathon for shipping and pick-up by Marathon.

16 And, Your Honor, the last piece of the settlement is that MVP

17 and Generate have agreed that they will make the miners

18 available for pick-up on a mutually agreed schedule with

19 Marathon, and that that timeline should be no later than seven

20 days after the Court enters its order.

21 We did receive, Your Honor, one -- some comments from

22 the Unsecured Creditors Committee, one, with respect to MVP's

23 lien rights on a go-forward basis, and we have language that

24 we'd like to read into the record to clarify that issue, and

25 that language is as follows:

1                   Taking into account the payment being sought as part  
2 of the stipulation of \$155,416.29 from the debtors to MVP, I  
3 set forth in the stipulation an agreed order, MVP was paid in  
4 full as of the date of filing of the stipulation and agreed  
5 order and waives any and all lien rights it may have had with  
6 respect to any and all miners in its possession as of that  
7 date. As of Tuesday, December 20, 2022, MVP is owed \$11,219.97  
8 for weekly warehousing charges for which the debtors have not  
9 yet been invoiced.

10                  The debtors intend to pay those amounts and the  
11 weekly warehousing charges that come due in the ordinary course  
12 of business until the debtors reject their contract with MVP.  
13 The debtors will not pay for costs incurred to pick, pack, and  
14 prepare any miners for shipping or retrieval except as set  
15 forth in the stipulation and agreed order that covers  
16 Marathon's miners, MVP and the debtors reserve all of their  
17 rights with respect to the assertion of liens on the miners MVP  
18 has in its possession related to future unpaid warehousing  
19 charges and pick, pack, and prepare (indiscernible).

20                  Your Honor, we do have evidence today, I will pause,  
21 though, and answer any questions that you have or allow others  
22 to speak with respect to this stipulation.

23                  THE COURT: With respect to the stipulation that he  
24 just -- the additional portion that you just read in the  
25 record, who do we have from Marathon to confirm their part of

1 that stipulation? Please press "five-star" one time.

2 Ms. Liou, good afternoon.

3 MS. LIOU: Good afternoon, Your Honor. Jessica Liou  
4 from Weil, Gotshal & Manges on behalf of Marathon Digital  
5 Holdings, Inc. I can confirm, Your Honor, that we are in  
6 agreement with that language read into the record. I do want  
7 to make two selections to what Mr. Micheli relayed to the Court  
8 about what the stipulation provides.

9 First off, I do want to say that Marathon filed a  
10 proof of claim in excess of \$42 million, so I didn't want that  
11 to confuse the record. In addition, the stipulation itself is  
12 self-effectuating once it is entered with respect to the  
13 rejection of all of Marathon's agreements. But other than  
14 that, Your Honor, we would -- we are grateful for you hearing  
15 this motion on an emergency basis given your busy schedule, and  
16 we do believe that it is a benefit for resolution of multiple  
17 disputes between the parties, and it's a good outcome, and we  
18 would ask that you approve it.

19 THE COURT: Thank you.

20 Let me hear any party that objects to the relief  
21 sought in the stipulation. All right. There are no objections  
22 that are being voiced.

23 You said you wanted to offer some proof and support,  
24 Mr. Micheli. Go ahead.

25 MR. MICHELI: Yes, Your Honor. Thank you.

1                   The debtors did submit a declaration of Drake Harvey,  
2 their president, in support of the motion. That declaration  
3 appears at Docket Number 693, and we would request that that be  
4 entered into evidence. Mr. Harvey is available today, Your  
5 Honor, we -- for cross-examination to the extent anyone has any  
6 questions with respect to his declaration.

7                   THE COURT: Is there any objection to the admission  
8 of 693 as substantive evidence of today's hearing? Is there  
9 any party that wishes to cross-examine Mr. Harvey? All right.  
10 The declaration filed at 693 is admitted. No party is seeking  
11 to cross-examine.

12                   Does any party have any additional evidence besides  
13 the Harvey' declaration? So, Mr. Micheli, just to be certain  
14 that I'm doing the right thing, you referenced ECS 643 as the  
15 target of the hearing. I think 643 is what I asked us to take  
16 up 630 on an expedited basis, but, really, the substantive  
17 order you want me to sign is 630? And I want to be sure that,  
18 A, I'm right about that, and, B, that 630 hasn't changed.

19                   MR. MICHELI: Your Honor, that is correct. 630 has  
20 not changed. For convenience, we also attached that  
21 stipulation to 643, which also -- which is actually 643-1, but  
22 that is correct.

23                   THE COURT: All right. Hearing no objection and  
24 reviewing the proof by Mr. Harvey as well as the thorough  
25 presentation by the debtor, I find that this is in the best

1 interests of the estate. No party is objecting. It's putting  
2 the miners back where they belong. It's resolving certain  
3 obligations of the debtor. No party is objecting. We'll have  
4 this entered today. I'll sign the order. Thank you.

5 MS. LIOU: Thank you, Your Honor.

6 MR. MICHELI: Thank you, Your Honor.

7 THE COURT: So I --

8 MR. MICHELI: The last thing I need done, Your  
9 Honor, --

10 THE COURT: Go ahead.

11 MR. MICHELI: No, please. Sorry.

12 THE COURT: No. I'm eager to get the other order  
13 submitted by 7:00, and so I'm -- I was going to skip ahead to  
14 what are we going to do to get the revised order? I need  
15 Mr. Gibbs to sign off as to form, and I need it filed so that I  
16 can get it entered by 7:00.

17 Mr. Grogan, what's that going to take to pull that  
18 off?

19 MR. GROGAN: Your Honor, I don't think we need much  
20 time. Mr. Shelley is, I think, handling -- handling whatever  
21 revisions we need to make, but it will be, you know, as we  
22 described on the record, and I will circulate a revised  
23 document as soon as we get off the hearing to Mr. Gibbs for  
24 signoff with the changes we discussed, and then we can file  
25 that under a certificate of conference.

1                   THE COURT: That would be great.

2                   MR. GROGAN: Or certificate of counsel, I should say.

3                   THE COURT: Yeah. Would you notify Ms. Do as soon as  
4 it gets filed? She can get it to me right away.

5                   MR. GROGAN: I will, Your Honor.

6                   MR. GIBBS: And, Your Honor, --

7                   THE COURT: (Indiscernible) -- go ahead, Mr. Gibbs.

8                   MR. GIBBS: I just wanted to ask Mr. Shelley to make  
9 sure he copies Ms. Going also on the proposed order. I'm going  
10 to have to deal with an emergency for the next couple of hours,  
11 and I don't want to slow things down.

12                  THE COURT: Thank you.

13                  Why don't I release Mr. Shelley and Ms. Going from  
14 this part of the hearing so that they can get to work on that  
15 order, and then we'll next move to whatever else Mr. Micheli  
16 wants to talk about.

17                  Hold on. I've got someone else that wanted to  
18 participate. Let's see.

19                  Someone had pressed "five-star" once, and then they  
20 pressed it again, which turned it off. So I don't know who  
21 that was. There we go. Hold on.

22                  Mr. Shelley, your line has been open the whole time.  
23 Go ahead.

24                  MR. SHELLEY: Thank you, Your Honor.

25                  One point I wanted to clarify. The Court has

1 expressed the concern before about making it as easy as  
2 possible for parties to change their votes to the extent  
3 subsequent disclosures make them change their mind. Our  
4 current voting procedures in Section 3(g) currently provide  
5 that if multiple ballots are filed by the same holder of a  
6 claim prior to the voting deadline, a later filed ballot  
7 supersedes the other one and automatically controls.

8 So I think that's about as easy a procedure as we  
9 could have, and I'm open to other suggestions if someone wants  
10 a different procedure, but I think that's about as easy as we  
11 could do it.

12 THE COURT: Why don't you put in my order that if you  
13 receive a ballot from someone that was cast prior to the date  
14 on which they appeared on the list, there won't be very many  
15 like this, that you will send to them a notice of their right  
16 to change the vote by overnight mail along with the new ballot  
17 to give them the ability to do that. Can you just include that  
18 in my order, so you don't need to change anything else within  
19 the procedures?

20 MR. SHELLEY: Yes. That's fine, Your Honor.

21 THE COURT: And I assume, we're talking this may  
22 happen three or four times, right? You're not suing that many  
23 people. Especially not (indiscernible) --

24 MR. SHELLEY: (Indiscernible).

25 THE COURT: -- who would have -- who would have

1 already voted, so -- okay. Let's do it that way, and I'll feel  
2 good about that.

3 Anybody else? Okay.

4 Mr. Shelley, Ms. Going, good luck.

5 Mr. Micheli.

6 MR. MICEHELI: Thank you, Your Honor.

7 The last matter on our agenda for today was a status  
8 conference with respect to a motion filed by KONZA MINING FUND  
9 I, LP, which appeared at Docket Number 410. KONZA filed a  
10 notice of status hearing, which appeared at Docket Number 685,  
11 Your Honor.

12 THE COURT: Correct. So if I could just  
13 (indiscernible) --

14 MR. MICHELI: Your Honor, I believe KONZA is -- I'm  
15 sorry. Go ahead, Your Honor.

16 THE COURT: No. I just was going to have KONZA's  
17 lawyer "five-star" one time.

18 Mr. Shepard, I haven't found your "five-star". Let  
19 me see if I can find you. There you are. Mr. Shepard, good  
20 afternoon.

21 MR. SHEPARD: Good afternoon. It's nice to see you,  
22 Judge. It's been a while.

23 And, if you could, unmute --

24 THE COURT: Good to see you.

25 MR. SHEPARD: -- Annarose Harding as well.

1                   THE COURT: Ms. Harding, if you would, press  
2 "five-star" one time on your line, or -- there we go. Go  
3 ahead, please.

4                   MR. SHEPARD: Very good. Sorry about that.

5                   Branch Shepard and Annarose --

6                   THE COURT: Ms. Harding, I just (indiscernible) --

7                   MR. SHEPARD: -- Harding (indiscernible) --

8                   MS. HARDING: Good afternoon, Judge.

9                   THE COURT: Good afternoon.

10                  All right. Go ahead, Mr. Shepard.

11                  MR. SHEPARD: Thank you, Judge.

12                  Branch Shepard and Annarose Harding for KONZA. And  
13 we are a little bit going back and forth with this situation  
14 because there are still some -- some miners that appear to be  
15 MIA, and Ms. Harding has some additional information that she  
16 can share, and we also conferred with our client to get the  
17 latest update today, but there is a little bit of confusion, I  
18 think, between the debtor of where these miners actually ended  
19 up and possibly their counsel as well that we're kind of in  
20 flux right now, but I'll let Ms. Harding update the Court.

21                  THE COURT: Thank you.

22                  Ms. Harding.

23                  MS. HARDING: Yes, Judge. Our motion, the subject of  
24 our motion was 583 miners that KONZA was trying to identify the  
25 whereabouts. Debtor's counsel has provided some additional

1 information, but as of today, there is still 103 miners that  
2 our client is not able to account for. We believe 90 of those  
3 miners are still in the B facility, and there are 12 that are  
4 at the Wolf Hollow location, but the new owner is telling us  
5 that those miners are not actually at the Wolf Hollow location,  
6 which is what debtor's counsel has actually told us.

7 So part of our problem is that we're getting  
8 conflicting information from the new owner and debtor's  
9 counsel, which is leaving our client in limbo as to the status  
10 of these 103 miners, Judge.

11 THE COURT: All right. But from the debtor's point  
12 of view, you may have assigned these contracts somewhere else,  
13 but I don't think that absolves your need to follow through,  
14 and it sounds like you are.

15 What's it going to take to figure out where the  
16 miners are that belong to Ms. Harding's client?

17 (Indiscernible) --

18 MR. MICHELI: Yes, Your Honor. This is the first I'm  
19 hearing about the -- yes, Your Honor. Matt Micheli of Paul  
20 Hastings. We've been going back and forth and providing  
21 information to KONZA. I believe this is the first time I'm  
22 hearing about these 103 miners specifically. We're happy to  
23 continue to work with them, Your Honor. And as I've indicated  
24 to them, you know, I'm happy to enter into an agreed order.

25 And more, too, I think what we did with U.S. Data

1 Group and others to allow for them to identify and obtain their  
2 miners. But, Your Honor, I will follow up with our client  
3 today, and if the information that we have -- I will note, Your  
4 Honor, that our client did conduct a inventory of miners, a  
5 physical inventory of miners prior to turning over possession  
6 of the locations that were sold. So we can -- the best I can  
7 do, at this point, since I don't have access -- our client does  
8 not have access to those facilities is, we can go off of the  
9 inventory that we had as of that time.

10 But, you know, I will note that Generate -- and the  
11 facilities have also (indiscernible) helpful in working through  
12 these issues, so we're happy to continue to work with both  
13 parties to try and resolve.

14 THE COURT: So what does a miner cost?

15 MR. MICHELI: I believe, a few thousand dollars, Your  
16 Honor, at least on the secondary market.

17 THE COURT: So each miner is worth two or three  
18 thousand?

19 MR. MICHELI: Potentially. It depends on how -- it  
20 also depends on the age of the miners as well.

21 THE COURT: Okay.

22 MR. SHEPARD: And, Judge, I don't know if that is  
23 completely accurate. I'd have to confirm that amount with our  
24 client, but I think just so you're aware, the hundreds of  
25 miners that they have, they have invested millions of dollars

1 into the miners and getting these contracts worked out, and  
2 they've got miners now that are in limbo. They are not  
3 energized. They are not performing.

4 They've got investors that they have to answer to,  
5 and KONZA is being prejudiced on a daily basis when these  
6 miners are not in operation, essentially. And so, you know,  
7 we're in a position that, you know, they are incurring damages  
8 with these miners that are not operating, and Mr. Micheli has  
9 been very helpful it seems, and I'm not trying to ambush him  
10 here today by talking about these 103 miners. This is  
11 something we just (indiscernible) --

12 THE COURT: He didn't take it that way, I don't  
13 think.

14 Look, you tell me what you want me to do. I've said  
15 they need to cooperate. It sounds like they are cooperating.  
16 Do you all want to go do a physical exam? Would that help you  
17 find them or not? I mean, these are pretty massive facilities  
18 to be looking for these miners at. So if you all want to go do  
19 a physical --

20 MR. SHEPARD: Okay.

21 THE COURT: -- inspection, I don't have a problem  
22 with that, and I doubt (indiscernible) --

23 MR. SHEPARD: (Indiscernible) --

24 THE COURT: -- the debtors.

25 MR. SHEPARD: -- do that. Yeah. We can ask our

1 client if they want to do that. I don't know if they want to  
2 go to those lengths. I think there may be an instance, if we  
3 need to, you know, essentially, you know, get some of these  
4 miners picked up and energized for somebody else, you know,  
5 that -- that is something that we've talked about, but we've  
6 just got to -- just must figure out where these miners, in  
7 fact, are.

8 And so I think that's kind of where we are, and  
9 debtor's counsel has been working with us. I'm not, by any  
10 means, saying they have not been. It's just a matter of a lot  
11 of moving parts.

12 THE COURT: Look, here's what I'm going to do. I'm  
13 opening discovery to help you find your miners if you want to  
14 spend money on discovery instead of cooperative turnover  
15 information. I think you're entitled to do discovery. It  
16 sounds like, economically, you're better off sitting back for a  
17 few more days. And then whenever you want an evidentiary --

18 MR. SHEPARD: We agree.

19 THE COURT: Whenever you want an evidentiary hearing,  
20 if you'll contact Ms. Do, we'll schedule you for an evidentiary  
21 hearing. I don't know what that's going to prove one way or  
22 the other until we know where the miners are.

23 MR. SHEPARD: Certainly, yes. And I agree, Judge,  
24 it's, you know, another few days or, you know, a little after  
25 Christmas or something, if we can gather that information. We

1 just learned -- you know, learned about the 103 miners today  
2 from our client, so that's --

3 THE COURT: Fair enough. Fair enough.

4 MR. SHEPARD: -- news to us as well.

5 THE COURT: All right.

6 Any problem with me just opening discovery? I'm not  
7 encouraging you to use it. When it comes time and you need to  
8 use it, use it, and then let me know when you're ready for an  
9 evidentiary hearing through Ms. Do.

10 MR. SHEPARD: Thank you, Judge.

11 THE COURT: Any problem with that by the debtor?

12 MR. MICHELI: No. That's acceptable, Your Honor.

13 THE COURT: Okay. What else can we cover today?

14 MR. MICHELI: Your Honor, I believe that covers all  
15 of the matters on the agenda for today.

16 THE COURT: Let me see if anyone else has anything  
17 they need to cover.

18 Are there any matters that someone believes we should  
19 have called today that we haven't called? If so, please press  
20 five, star one time on your phone.

21 All right. We're going to recess. Please remember  
22 to contact Ms. Do as soon as you file your proposed order.

23 And, Ms. Do, if you will, just get in touch with me  
24 right away.

25 Hold on. I've got one more party.

1                   Mr. Shelley, go ahead.

2                   MR. SHELLEY: Thank you, Your Honor.

3                   One last item is we need to have a hearing date for  
4 the confirmation hearing, so we're thinking given that we're  
5 pushing back to the various deadlines, looking at the calendar,  
6 we think that February 13th would work well subject to the  
7 court's availability.

8                   THE COURT: All right. February 16th at 1:30 in the  
9 afternoon for a confirmation hearing. Would that work?

10                  MR. SHELLEY: That's excellent, Your Honor.

11                  (Multiple speakers, no record)

12                  THE COURT: Anyone have any objection to that? All  
13 right. That will be the confirmation hearing. Thank you.

14                  MR. GROGAN: Thank you, Judge.

15                  THE COURT: Any other issues that I've got to cover?

16                  All right.

17                  MR. GROGAN: Your Honor --

18                  THE COURT: (Indiscernible) --

19                  MR. GROGAN: No. I was just going to say, if it's  
20 you that's -- if it's you that has tested positive, I hope you  
21 recover quickly. If you're just quarantined, you've done so in  
22 style. If you're doing it (indiscernible).

23                  THE COURT: No. What happened is I've tested  
24 positive, and I've been sick, and my wife is my age, and I  
25 don't want to go home and infect her, so I'm camping out, but I

1 appreciate the good wishes. Thank you.

2 MR. GROGAN: Thank you.

3 MR. GIBBS: Thanks, Your Honor.

4 THE COURT: We're in recess. Thank you.

5 (Proceedings concluded at 3:03 p.m.)

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**C E R T I F I C A T I O N**

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16 I, Alicia Jarrett, court-approved transcriber, hereby  
17 certify that the foregoing is a correct transcript from the  
18 official electronic sound recording of the proceedings in the  
19 above-entitled matter.

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*Alicia J. Jarrett*

ALICIA JARRETT, AAERT NO. 428

DATE: December 27, 2022

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